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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/600,091	06/20/2003	David W. Gohl	163.1769US01	9151

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MERCHANT & GOULD PC
P.O. BOX 2903
MINNEAPOLIS, MN 55402-0903

EXAMINER	
DOUYON, LORNA M	
ART UNIT	**PAPER NUMBER**
1751	

DATE MAILED: 06/28/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/600,091	GOHL ET AL.	
	Examiner	Art Unit	
	Lorna M. Douyon	1751	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *02 June 2006*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *30-36* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *30-36* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on June 2, 2006 has been entered.

2. Claims 30-36 are pending. Claims 1-29 and 37-48 have been canceled.

3. The rejection of claims 30-34 under 35 U.S.C. 103(a) as being unpatentable over Marple (US Patent No. 3,197,980) is withdrawn in view of Applicants' amendment.

4. The rejection of claims 35-36 are rejected under 35 U.S.C. 103(a) as being unpatentable over Marple as applied to claims 30-35 above, and further in view of Spendel (US Patent No. 4,489,455) is withdrawn in view of Applicants' amendment.

Claim Rejections - 35 USC § 112

5. Claims 30-36 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The limitation "at least about 15% of a concentrate" in line 4 of claim 30 does not

meet the description requirement because the phrase "at least" has no upper limit and may cause the claim to read on embodiments outside the range "about 15 to about 50 wt%" in the specification on page 4, line 24. See also MPEP 2163.05 III.

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

7. Claims 30-36 are rejected under 35 U.S.C. 103(a) as being unpatentable over Noyes et al. (US Patent No. 6,828,292), hereinafter "Noyes".

Noyes teaches a process for treating fabric articles which comprises the steps of: (a) in a first laundering appliance, washing a load of fabric articles in the presence of a predominant fluid and at least one cleaning composition comprising a surfactant; (b) in said first laundering appliance, at least partially removing said cleaning composition from said load of fabric articles; (c) in said first laundering appliance, at least one step of treating said load of fabric articles with a fabric article refreshment composition in the presence of a lipophilic cleaning fluid; (d) in said first laundering appliance, removing said lipophilic cleaning fluid from said fabric articles (see col. 3, lines 1-15). The treating and removing steps above would be equivalent to the flushing and finishing steps of the present claims. Step (a) may be an immersive washing step (see col. 3, lines 16-19), which is functionally equivalent to the spraying step, wherein the fabric articles in a

conventional vertical axis machine or plunged into a conventional horizontal washing machine (see col. 4, lines 45-48). The cleaning composition comprises cleaning additives such as antibacterial agents (see col. 11, lines 16-22), fabric softening agents and finishing aids (see col. 11, lines 50-51). The composition is diluted in use (see col. 15, lines 27-32). In one cleaning composition, the total surfactant content is 79.5 wt% (see Example 5, col. 16, lines 45-53). Noyes, however, fails to specifically disclose the dilution range in the level as those recited.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to optimize the dilution range of Noyes because it is within the level of ordinary skill in the art to optimize parameters through routine experimentation for best results. As to optimization results, a patent will not be granted based upon the optimization of result effective variables when the optimization is obtained through routine experimentation unless there is a showing of unexpected results which properly rebuts the *prima facie* case of obviousness. See *In re Boesch,* 617 F.2d 272, 276, 205 USPQ 215, 219 (CCPA 1980). See also *In re Woodruff*, 919 F.2d 1575, 1578, 16 USPQ2d 1934, 1936-37 (Fed. Cir. 1990), and *In re Aller*, 220 F.2d 454, 456, 105 USPQ 233, 235 (CCPA 1955).

Double Patenting

8. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re*

Vogel, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

9. Claims 30, 33-36 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 17, 24 and 29 of U.S. Patent No. 6,897,188. Although the conflicting claims are not identical, they are not patentably distinct from each other because both sets of claims are drawn to similar methods for cleaning laundry which comprises concentrated detergent components and further comprises cationic surfactants (which are considered as both antimicrobial and finishing components) differing only in the present claims require a specific proportion of the concentrate. The washing step in US '188 also reads on the flushing step of the present claims. US '188, however, teaches a concentrate composition, hence, modification of the proportion of the amount of the concentrate is within the level of ordinary skill in the art.

10. Claims 31-32 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 17 and 29 of U.S. Patent No. 6,897,188 in view of Farrington et al. (US Patent No. 5,219,370), hereinafter "Farrington".

US '188 teaches a similar method for cleaning laundry as recited above. US '188, however, fails to disclose treating or washing laundry in a wash wheel of horizontal axis washer; and the step of contacting by spraying.

Farrington teaches a method of washing fabric in a horizontal axis clothes washer (see col. 1, lines 6-9) which uses less energy and water (see col. 1, lines 10-13; line 62 to col. 2, line 1), which comprises the steps of rotating the washer chamber about its horizontal axis with fabric; directing a recirculating spray of concentrated detergent solution onto said fabric for a first period of time; diluting said concentrated detergent solution to a lesser detergent concentration level; directing a recirculating spray of said lesser concentrated detergent solution onto fabric for a second period of time; and draining said lesser concentrated detergent solution from said wash chamber (see claim 1).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to perform the method of US '188 in a horizontal axis washer which includes spraying of the concentrated detergent solution onto the fabric because it is shown by Farrington that said steps provide the use of less energy.

Response to Arguments

11. Applicant's arguments filed June 2, 2006 have been fully considered but they are not persuasive.

With respect to the nonstatutory obviousness-type double patenting rejection of claims 30, 33-36 over US Patent No. 6,897,188 and claims 31-32 over US '188 in view of Farrington,

Applicants argue that these rejections have not been applied to the claims as currently amended but would file a terminal disclaimer should the rejections are maintained.

The nonstatutory obviousness-type double patenting rejection of claims 30, 33-36 over US Patent No. 6,897,188 and claims 31-32 over US '188 in view of Farrington is maintained as discusses above.

Conclusion

12. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The references are considered cumulative to or less material than those discussed above.

13. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lorna M. Douyon whose telephone number is (571) 272-1313. The examiner can normally be reached on Mondays-Fridays from 8:00AM to 4:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Douglas McGinty can be reached on (571) 272-1029. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Lorna M. Douyon
Primary Examiner
Art Unit 1751